

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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February 27, 2006

Memo To Counsel Re: MDL-15863, Alger Subtrack;
Bernstein v. Fred Alger Mgmt., Inc., et al.
Civil No. JFM-04-0861

Dear Counsel:

The purpose of this letter is to address the concerns raised by the following defendants with respect to plaintiffs' proposed order implementing my rulings on the motions to dismiss: James P. Connelly and B. James White. I agree with these defendants that plaintiffs have not sufficiently alleged control person liability under Section 48 of the Investment Company Act. While the caption of the Section 48(a) count states that it applies to the "Trustee Defendants," which includes both Connelly and White, the allegations within the count focus exclusively on defendants Fred M. Alger, III and Dan C. Chung. Thus, the proposed order should state that the Section 48(a) claims against Connelly and White are dismissed. This dismissal is without prejudice, however, as plaintiffs are free to amend their complaint if they can allege in good faith that both Connelly and White were indeed control persons.¹

I ask that the parties please submit in the next two days, in both Track 3 and the individual case (04-861), a new proposed order reflecting this ruling.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an order.

¹ This ruling moots the question whether plaintiffs effectively served process upon Connelly.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge